

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3219 OF 2005**

Shri Abdul Razaque Abdul Kader Quereshi ...Petitioner.
V/s.

The Chief Officer, Khopoli Municipal
Council, Khopoli & Anr. ...Respondents.

Mr.S.G.Kudle for Petitioner.

Mr.Rajesh Datar for Respondent No.1.

Mrs.M.P.Thakur, A.G.P. for Respondent No.2.

**CORAM: H.L.GOKHALE &
J.H.BHATIA, JJ.
DATE : 12th July, 2006.**

P.C.:

1. Heard the learned counsel for the Parties.
2. The Petitioner claims to be running business of selling mutton in the municipal area of the 1st Respondent-Khopoli Municipal Council. He claims to be running that business for quite sometime and by the present Petition, he is seeking a direction to the 1st Respondent to renew his registration certificate for shop no.3 at Shilphata from 1998 onwards.
3. What is material to note is that the Petitioner had earlier filed a suit for the direction that gala no.1 in the market at Shilphata be given to him on a permanent

basis. That suit was filed in the year 1996 but the said Civil Suit bearing No.52 of 1996 came to be dismissed by the Trial Court after framing necessary issues. Infact, the Trial Court held that the Petitioner was not carrying on his business legally and it also held that the Municipal Council had not allotted galas illegally. Matter was carried in appeal and the Additional District Judge of Raigad in Civil Appeal No.33 of 2001 confirmed the findings of the Trial Court and dismissed the Appeal. It is thereafter that the present Petition is filed for the aforesaid reliefs.

4. The submission of Mr.Kudle, the learned counsel appearing for the Petitioner is that under Section 272 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, it was mandatory for the Municipal Council to allot such galas or stalls in the market area on an auction basis. He has relied upon 272(1)(b) of the said Act.

5. Mr.Datar, the learned counsel for the 1st Respondent-Municipal Council, on the other hand, points out that Section 272(1)(b) undoubtedly provides one method but the other method is under sub Section 1(a) which permits Municipal Council to give such stalls on the basis of rent or fees as fixed from time to time. In the

instant case, as far as this market at Shilphata is concerned, Municipal Council had decided to go on the basis of 'License Fee Basis' and not on the basis of 'Auction'. It has been stated in their reply affirmed by the Chief Officer that even now 30 galas are vacant and the Respondent No.1 is even today ready and willing to allot a gala to the Petitioner on a 'License Fee Basis'.

6. We have noted the submissions of both counsel. In a market, there could be some stall owners who could be financially well whereas, some may not. The Municipal Council may, therefore, make them contribute and go for auction basis in which case, they will have to contribute to the cost of the construction. As against this, there would be some persons who sell their products at market on daily basis and who may not be able to contribute on a auction basis. It is for this purpose that two different methods are provided. It is for the Municipal Council to decide which method to adopt. In the present case, they have decided to allot stalls on the 'License Fee Basis'. We do not think that we can fault their action on that ground. In the instant case, the Respondent No.1 is ready to allot gala to the Petitioner if he so applies. It is also stated that 30 galas are lying vacant. In the circumstances, if the petitioner wants to apply, he may apply for one of those stalls at Shilphata market and in

which case, the Municipal Council will allot him gala on 'Licence Fee Basis'. On Petitioner making necessary application, the Municipal Council will issue him fresh licence. Mr.Datar informs that apart from the licence for the particular space, the Petitioner will have to apply for selling mutton over there. The Petitioner will require separate licence for that purpose. The Petitioner may apply for that purpose. On his so applying, fresh licence will be issued for that purpose also. Petition disposed of.

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(H.L.GOKHALE, J.)

(J.H.BHATIA, J.)